

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 JUL -5 P 3: 18

In the Matter of

Amendment of Section 73.202(b),

FM Table of Allotments,

FM Broadcast Stations.

(Noblesville, Indianapolis, and Fishers,
Indiana)MM Docket No. 01-143 RECEIVED
RM-10153

NOTICE OF PROPOSED RULE MAKING

Adopted: June 20, 2001

Released: June 29, 2001

Comment Date: August 20, 2001

Reply Comment Date: September 4, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed by INDY LICO, Inc., ("petitioner"), licensee of Stations WGRL(FM), Noblesville, Indiana, and WGLD(FM), Indianapolis, Indiana, proposing the reallocation of Channel 230A from Noblesville, Indiana, to Fishers, Indiana, as the community's first local transmission service, and the modification of Station WGRL(FM)'s license to reflect the change of community. It also proposes the reallocation of Channel 283B from Indianapolis to Noblesville, Indiana, to retain the community's first local transmission service, and the modification of Station WGLD(FM)'s license to reflect the change of community.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ It states that each of its proposals falls within the provisions of this rule because the proposal to reallocate Channel 230A from Noblesville to Fishers is mutually exclusive with Station WGRL's existing authorization for Channel 230A at Noblesville, and its proposal to reallocate Channel 283B from Indianapolis to Noblesville is mutually exclusive with Station WGLD's current allotment of Channel 283B at Indianapolis. It also notes that because the allotment of Channel 230A at Fishers will provide the community with a first local transmission service and the allotment of Channel 283B retains a first local service at Noblesville, this proposal falls within priority (3) of the FM allotment priorities and will serve the public interest.²

¹ See Report and Order in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

² The FM allotment priorities are 1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [co-equal weight given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)

3. In support of the proposals, petitioner states that Fishers is a community for allotment purposes. It states that the Town of Fishers, with a U.S. Census population of 7,508 persons, was incorporated in 1891, is a community for allotment purposes and is independent of the larger Indianapolis Urbanized Area of which it is a part. Petitioner also states that the community is independent of the Urbanized Area and provides an analysis of the community using the factors delineated in *Faye and Richard Tuck, Inc.*³ to prove its independence of the Urbanized Area. Petitioner also notes that the community of Noblesville will end up with a higher class channel as a result of the change of community.

4. We believe that the two reallocations together warrants consideration because they could serve the public interest. We note that we would be reluctant to allow the reallocation of Channel 230A from Noblesville to Fishers, standing alone, because it would result in the removal of the sole local transmission service from Noblesville.⁴ However, considering the two proposals together, we believe that they could result in a preferential arrangement of allotments because Fishers will gain its first local transmission service and Noblesville retains its sole local transmission service with the added benefit of a higher class channel.

5. Channel 230A can be reallocated from Noblesville to Fishers at petitioner's licensed site 7.1 kilometers (4.4 miles) north of the community.⁵ Channel 283B can be reallocated from Indianapolis to Noblesville at petitioner's licensed site 26.9 kilometers (16.7 miles) southwest of the community.⁶ Petitioner states that there is no change of transmitter site and therefore no gain or loss in area or population at either community. Our analysis shows that the proposal to allot Channel 230A from Noblesville to Fishers will provide a city-grade signal to 13.8% of the Urbanized Area. Our analysis also shows that while Noblesville is not in the Indianapolis Urbanized Area, the proposal will continue to provide a city-grade signal to 100% of that Urbanized Area. We note that because the reallocation of Channel 283B involves no site change and Station WGLD(FM) will be providing the same amount of coverage to the Indianapolis Urbanized Area,⁷ the Commission does not require an analysis of the community of Noblesville pursuant to the policies enumerated in *Faye and Richard Tuck* because that aspect of this proposal does not constitute a migration to an urbanized area warranting application of this policy.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

³ 3 FCC Rcd 5374, 5378 (1988).

⁴ See *Report and Order in MM Docket 89-87*(Bessemer and Tuscaloosa, Alabama), 5 FCC Rcd 669; app. for rev. granted 11 FCC Rcd 11585 (1996).

⁵ The coordinates for Channel 230A at Fishers are 40-00-55 NL, and 85-58-58 WL.

⁶ The coordinates for Channel 283B at Noblesville are 39-50-25 NL and 86-10-34 WL.

⁷ See *Moncks Corner, Kiawah Island and Sampit, South Carolina*, 15 FCC Rcd 8973, 9892 (2000), and *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864, 2868 (1995).

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Fishers, IN	--	230A
Noblesville, IN	230A	283B
Indianapolis, IN	226B, 234B, 238B, 242A, 277B, 283B, 289B, 300B	226B, 234B, 238B, 242A, 277B, 289B, 300B

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before August 20, 2001, and reply comments on or before September 4, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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Shook, Hardy & Bacon, LLP
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Suite 800
Washington, DC 20005
(counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on

the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any

reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off protection.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.